

- (1) The Appeals Board agrees with the Administrative Law Judge that claimant has sustained personal injury by accident arising out of and in the course of employment with

respondent. The Appeals Board finds it is more probably true than not that claimant scraped her ankle on a box while at work that resulted in an ulceration on her left leg.

(2) The Appeals Board must reverse the finding of the Administrative Law Judge regarding timely notice. The respondent and insurance carrier are correct that the record fails to contain evidence that notice of accident was given to an owner, supervisor, or anyone else who held a managerial position with respondent. However, because notice was not made an issue by the respondent and insurance carrier until after the conclusion of the testimony, the proceeding should be remanded for the taking of additional evidence on that issue. In deciding to remand this case to the Administrative Law Judge, the Appeals Board is relying upon the representations of respondent's counsel that notice is a legitimate issue. Implicit in that representation is the suggestion that Mrs. Pat Liles is not a co-owner of respondent and that she did not inform her husband of her conversations with claimant about possibly needing medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on April 14, 1995, should be, and hereby is, set aside; and that this proceeding should be, and hereby is, remanded to the Administrative Law Judge for the taking of evidence regarding timely notice of accident.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David Jackson, Wichita, Kansas
P. Kelly Donley, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
David A. Shufelt, Acting Director